



BOULT • CUMMINGS
CONNERS • BERRY PLC

RECEIVED

2003 NOV 21 PM 4: 11

Henry Walker
(615) 252-2363
Fax (615) 252-6363
Email hwalker@boultcummings.com

T.R.A. DOCKET ROOM

November 21, 2003

Chairman Deborah Taylor Tate
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Complaint of US LEC of Tennessee Inc. Against Electric Power Board of
Chattanooga
Docket No.: 02-00562

Dear Chairman Tate:

Please find enclosed the original and thirteen copies of the direct testimony of Wanda G. Montano and Michael G. Moeller for the above captioned docket.

If you have any questions, please contact me at 615-252-2363. Thank You.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker

HW/pp
Enc.

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**

3
4 **November 21, 2003**
5
6

IN RE: COMPLAINT OF US LEC OF) *DOCKET NO; 02-00562*
TENNESSEE, INC. AGAINST ELECTRIC)
POWER BOARD OF CHATTANOOGA)
)

7
8 **DIRECT TESTIMONY OF MICHAEL G. MOELLER ON BEHALF OF US LEC OF**
9 **TENNESSEE INC.**

10 **Q: PLEASE STATE YOUR NAME, ADDRESS, AND CURRENT JOB.**

11 **A:** My name is Michael G. Moeller. My address is 800 S. Gay Street, Suite 1415,
12 Knoxville, Tennessee 37929. I am currently Vice President. Until May 2003, I was vice
13 president of sales for US LEC in Tennessee and Kentucky and was acting as sales
14 director in Chattanooga, a position I started in October 2001.

15 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 **A:** To describe, based on my first hand experience, how EPB uses its monopoly presence as
17 an electric company and the financial security of its electric business to convince
18 customers they are not like other competing local exchange telephone carriers.

19 **Q: PLEASE GIVE SOME EXAMPLES.**

20 **A:** On September 26, 2002, I attended the Small Business Expo in Chattanooga, TN. EPB
21 had the largest booth at the trade show which was at the center of the show area. The
22 main signs and labeling for the booth was "EPB" in the form of their logo (see pictures).
23 The booth had a mix of power and telecom equipment, power and telecom marketing
24 banners (information boards). There was no clear distinction between EPB Power and
25 EPB Telecom within the booth. The main banners made it very clear that this was an
26 EPB booth. There was no mention of EPB Power or EPB Telecom, just EPB.

1 Furthermore, I have been personally present on several occasions in which
2 representatives of EPB Telecom represent themselves as being from EPB and state that
3 "we have been around for seventy years." In addition, several telecommunication
4 prospects and customers have stated to me that EPB has been around for 70 years. Some
5 have even stated that EPB has the money they need since they are the power company
6 and they said that the CLECs are going out of business. In my opinion, EPB's goal is to
7 give the impression that EPB's telecommunications services are offered by the same
8 entity that provides electric services.

9 **Q: DO YOU BELIEVE EPB TELECOM IS PURPOSELY MISLEADING THE**
10 **PUBLIC?**

11 A: Yes. I believe that EPB purposefully confuses the market, customers and the general
12 public of EPB Telecom's background. This is clearly seen in the newspaper articles on
13 telecom or internet in which the name "EPB" is interchanged with EPB Telecom.

14 **Q. DOES THE USE OF THE EPB NAME GIVE EPB TELECOM AN ADVANTAGE**
15 **OVER OTHER LOCAL EXCHANGE CARRIERS?**

16 A. Obviously it does. EPB Telecom hardly needs to advertise because the name EPB is
17 already pervasive in Chattanooga. It is on manhole covers, electric trucks and equipment
18 throughout the city. This name recognition was paid for on the backs of EPB electric rate
19 payers and should not be allowed to subsidize EPB's telecommunications operations.

20 **Q. HOW IS EPB TELECOM VIEWED BY THE PRESS AND BY PUBLIC**
21 **OFFICIALS IN CHATTANOOGA?**

22 A. In article after article, EPB Power or EPB Telecom are simply referred to as EPB.
23 The Mayor does not distinguish between the telecommunications and power divisions;
24 neither does the press. According to one news article, the Electric Power Board

1 shortened its name to "EPB" for the very purpose of being able to brand all its services
2 with the EPB name. See Moeller Exhibit 1. The strategy has apparently worked. The
3 public only sees EPB, not EPB Power or EPB Telecom.

4 **Q. DOES THE ADVERTISING AND MARKETING OF EPB TELECOM**
5 **DEMONSTRATE THAT EPB IS LEVERAGING ITS NAME AND REPUTATION**
6 **TO SELL TELEPHONE SERVICE?**

7 A: Yes. Attached to my testimony are several blatant examples taken from EPB's web site
8 and advertising of how EPB Telecom is being subsidized by using the EPB name. The
9 first page of the EPB web site announces that EPB is now "more than a power company"
10 and is able to provide both electric and telecommunications services to its customers.
11 Another page on the web site states that EPB Telecom supposedly has "Reliability"
12 because EPB has been able to provide "reliable electric power service" and "everything
13 we've learned over the years about keeping the lights on ... has been put to good use in
14 our telecommunications delivery. So you can be sure your phone service will be as
15 reliable as your power service." EPB Telecom is obviously trying to differentiate itself
16 from other CLECs solely on the basis of its affiliation with EPB Electric.

17 **Q. WHAT ABOUT JOINT MARKETING OF EPB AND EPB TELECOM IN**
18 **ADVERTISING?**

19 A. Attached to my testimony is one advertisement which states, "Hear the one about the
20 power company that got into the phone biz? Yeah, at first people were shocked. Then
21 they couldn't stop talking." The printed ad states at the bottom, "Imagine your phone and
22 power service coming from one source. We're thinking about EPB -- the power
23 company you can expect more from."

1 An ad for EPB in the Yellow Pages, listed under "Electric Contractors," states,
2 "Now serving your electric power and telecommunication needs. EPB. More Current
3 Than Ever."

4 Another advertisement touts the "EPBT advantage." It says, "Our name carries
5 over 70 years of trust, service and dedication." Finally, there is one advertisement that
6 implies that choosing EPB for telephone service "is choosing a much, much brighter
7 future for our own city" supposedly because "EPB Telecommunications' reliable network
8 solutions will benefit Chattanooga businesses and the community as a whole."

9 **Q. WHAT ABOUT PRESS RELEASES?**

10 A. When EPB Telecom reached its second anniversary, EPB issued a press release, dated
11 July 16, 2001. It is still on the EPB web site. It quotes a telephone customer as saying
12 that the reason he chose EPB Telecom was because of "EPB's demonstrated commitment
13 to promoting local business." The customer states, "EPB already has a superb reputation
14 in Chattanooga. Few companies offer the same dedication to both community and
15 customer service that EPB does and that philosophy has carried into their
16 Telecommunications Division."

17 **Q. WHAT DO YOU CONCLUDE FROM ALL OF THIS?**

18 A. EPB is clearly using its name, reputation, and financial stability as a monopoly electric
19 power company to subsidize its telephone business. They are not even trying to follow
20 their "Code of Conduct" which this agency required them to adopt. The Code states that
21 joint marketing of electric and telephone services is permitted "provided that the
22 customer is informed of the separate identities of each [division]." In these examples I
23 have given, EPB fails to remind the customer of the separate identities of the two

1 divisions. To the contrary, the marketing emphasizes that both services come from the
2 same entity.

3 **Q. IF EPB TELECOM DISCONTINUED ALL REFERENCES TO EPB AND EPB**
4 **DISCONTINUED ALL REFERENCES TO EPB TELECOM, WOULD THAT**
5 **SOLVE THE PROBLEM?**

6 A. No. The real issue is the use of the name "EPB Telecom" in the marketing EPB's
7 telecommunications services. As long as "EPB" is in the name, customers will be
8 reminded that their telephone service and electric service come from the same source.
9 That kind of subsidization gives EPB Telecom a built-in advantage over any other
10 competing local telephone company. State law prohibits EPB Electric from subsidizing
11 its telephone business. There is no doubt that EPB is violating that statute. I've seen it
12 first hand.

13 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

14 A. Yes.



volume 1:2 spring 2000

Through Tech Talk

by Dr. Greg Sedrick

Strike Up The Bandwidth

'Who ya gonna call?' 'Who's on first?'

Have an existing business or intend to build one? You need to consider the next wave of technology that will be focused on *device integration*. You and your customers currently use several different appliances to access the Internet and television and radio programs. Ultimately, one appliance will do it all. It's just around the corner.

Likewise, the many sources of information and entertainment will be reduced dramatically, made possible not only by technology but also by the Telecommunications Act of 1996. The act begins: The goal of this new law is to let anyone enter any communications business - to let any communications business compete in any market against any other.(1)

This law was passed to stimulate competition. And so a scramble now is under way.

Even before the Act became law, it generated local interest and - interestingly - opposition. The City of Chattanooga, concerned that potential providers would tear up roads and easements to lay fiber and cable, passed a resolution opposing the Act.(2)

Despite these efforts, the Act did pass and has been undergoing further interpretation via local implementation laws. While the final impact is not completely known, it is resulting in a mix of new players. The growth of consumer desire for these services and the resulting potential profit have created new ventures, new partnerships and new competitors. *The rush is to expand the bandwidth to the consumer. Why?*

Bandwidth is the magic that brings digital information from one place to another. The larger the bandwidth, the faster signals can travel. Services utilizing video require the large amounts of bandwidth that can travel to your home and business via copper and aluminum cable, in light pulses through fiber optic cable and through the air in microwave or standard radio/cellular

signals. Hence the new competitors are those that have current access to these bandwidth carriers. Who are they?

Technological advances now have immediate and reverberating impacts on market responses. The AOL(3) Time Warner merger and the Microsoft judgment are two good examples. The local players no doubt change their strategy on a day-to-day basis.

Here is a listing of the local players and what they might be offering you.

1. BELL SOUTH - www.bellsouth.com standard and cellular phone service. Existing infrastructure via phone lines and microwave cell towers to reach nearly all our region's homes and businesses provides access to business and offers on-demand video service in Atlanta, Jacksonville, Orlando and New Orleans. Look soon for Chattanooga!
2. CDC - www.cdc.net Internet Service Provider (ISP) in business locally for many years. CDC has experience and an existing customer base in Internet services.
3. Chattanooga On-Line - www.chattanooga.net This ISP has been on line locally the longest and is host to the majority of current Chattanooga web sites. COL has experience in the business and an existing customer base; it will continue to partner with others to deliver this service to your site.
4. COMCAST - comcast.com Provides local cable TV and some digital music service. In other regions, Comcast also provides Internet services and telephone. This multibillion-dollar company specializes in broad bandwidth applications; it has expressed an interest in expanding locally.
5. EPB - www.epb.net Formerly known as the Electric Power Board, EPB is expanding services from electric utilities to telecommunications including Internet and telephone service. EPB officially reduced its name to three call letters to reflect this new business strategy. It has an advantage of possessing existing connections to all area residential and commercial facilities through its power lines. These power lines can carry bandwidth to supply more than electrical power. EPB already offers cable broadcasting services. Look to EBP to partner with one or several other firms to expand offerings.
6. NEXTLEC - www.nextlec.net "LEC" stands for Local Exchange Carrier. This new local firm is one of 11 LECs in the country. It has been investing heavily in 'dark fiber', fiber optics that are currently not in use but will allow for immediate expandability. Offering a full range of services (Internet, telecommunications and on-demand video), NextLec can deliver large bandwidth capacity. It needs to partner with another player to deliver to your site. They are up and running strong.

Some of these providers may merge; some may fold. The competition

is hot! Ironically, some of those who partner will be competitors for some other services.

How much bandwidth do you require? Streaming video requires a large amount of bandwidth and span of services. That's why Chattanooga State has a partnership with NextLec. A dynamic eCommerce site has similar requirements. Simple communication systems need much less. If you are unsure of your needs, visit Bill Gates' companion site for his text: *Business @ The Speed of Thought* (www.speedofthought.com) or *The Clickable Corporation* by business consulting firm Arthur Andersen (www.arthurandersen.com/clickable).

(1) www.fcc.gov/telecom.html
and
www1.whitehouse.gov/WH/EOP/OP/telecom/summary.html

(2) [www.chattanooga.gov/OrdReso/Resolutions%
201996/20876BillProtestTele](http://www.chattanooga.gov/OrdReso/Resolutions%201996/20876BillProtestTele)

(3) America Online

© 2000 Chattanooga On The Move Magazine / Chattanooga State Technical Community College

Home Electric Power

Business Electric Power

Green Power

Telecommunications

Weather Watch

About Us

Current News

Employment

Community

Economic Development

Contact Us



Pay Online

Welcome to EPB.

We're more than a power company, we're a powerful resource dedicated to providing the services you depend on most at work and at home. With over 156,000 customers and more than sixty years experience in providing reliable, low-cost electric power, we're one of the nation's largest publicly-owned utilities, and one of the fastest growing Telecommunications companies. What can we do for you today?

BREAKING
NEWS

Call 423-648-1EPB(1372) for 24-hour Customer Service.




About Us

[Mission](#)[History](#)[Future](#)

[Home](#)[Current News](#)[Employment](#)[Community](#)[Economic Development](#)[Contact Us](#)

Mission

EPB was founded to ensure the availability of reliable, low-cost electric power service for Chattanooga area residents, industry and businesses. But with deregulation around the corner, EPB is becoming more than a power company. We're becoming a powerful company--an innovative, progressive company you can depend on for a wide range of reliable, affordable services. But whether you have electric, telecommunications or other services from EPB, one thing will never change--the way we've always put the needs of our customers first. It's a way of doing business that's served us well for more than six decades--a philosophy which is, indeed, more current than ever.

[Home Electric Power](#) [Business Electric Power](#) [Telecommunications](#) [Weather Watch](#)

RELIABILITY

When it comes to providing reliable electric power service, EPB is one of the leading utilities in the country. And EPB Telecommunications is no different. Everything we've learned over the years about keeping the lights on — including redundant outage prevention systems, automated restoration systems and maintaining a crack linemen crew — has been put to good use in our telecommunications delivery. So you can be sure your phone service will be as reliable as your power service. And that's saying something.

HOME

Call 423-648-1500 for 24-hour Customer Service.

Electric Stockings

MOORE & KING

SURGICAL & ELASTIC STOCKINGS

4315 Brainerd Rd 698-8586
960 E 3rd 266-7172

Electric Companies

EPB ELECTRIC POWER

636 MARKET ST 756-2706

(Please See Our Display Ad This Page)
(Please See Our Ad On Inside Front Cover)

Encon
1120 W Mississippi Av Chattanooga 756-6100
Energy Services LLC 811 Broad St 266-1885
North Georgia Electric Membership Corporation
3368 Battlefield Pkwy Ft Ogle 866-2231
Volunteer Energy Cooperative
9931 Highway 58 Ooltewah 344-8382

Electric Contractors

See Also Home Improvements

AA Electric Company 622-6544

ACTION AIR & ELECTRIC

1406 W Boy Scout Rd Hixson 842-5575

ARMAN ELECTRIC CO INC

"Since 1975"

COMMERCIAL - INDUSTRIAL

24 HOUR SERVICE
Member Of AGC and NECA

P. O. Box 72655 Zip 37407
2311 E 28th St 622-5103

Advanced Electric 5304 Dupont St E Rdg -- 867-7488
(Please See Our Display Ad Page 259)

AMERICAN ELECTRICAL INC

**COMMERCIAL • INDUSTRIAL
RESIDENTIAL**

Over 30 Years Experience
Member Of NECA
892-2382

108 Cedar Ln 892-2382

APEX ELECTRIC CO INC

COMMERCIAL • INDUSTRIAL

NEW CONSTRUCTION
MAINTENANCE

3007 Calhoun Av 629-4343

Appalachian Electric

1008 Cowart Dr Hixson 874-0863
(Please See Our Display Ad Next Page)

Appalachian Electric 332-6103

Appalachian Electric 842-7006

Ap George W Electric Co 894-1879

1231 Gunbarrel Rd 894-1879

ASAP Electric Company 624-6410

1200 Dods Av Chattanooga 624-6410

Barnett Electric Co 886-4692

2947 Corral Rd Signal Mountain 886-4692

BEACON ELECTRIC

COMMERCIAL • RESIDENTIAL

New Construction
Maintenance • Remodeling

364-5926

Berkhart W E 5858 Grubb Rd Hixson 877-1909

18 Electric 8740 Highway 58 Harrison 344-8870

City Electric Co 886-6966

729 A James Blvd Sgml Mtn 886-6966

COMBS ELECTRIC CO

4240-A Benton Dr 698-6936

Nights Sundays & Holidays Dial 877-8003

Ordell Electric 6434 Hixson Pike Hixson 842-0676

O E L ELECTRIC CO

COUNTY WIDE SERVICE

REPAIRS TODAY!

24 HR. EMERGENCY SERVICE

"OUR PRICES WON'T SHOCK YOU!"

"Please See Our Display Ad Next Page"

697-0296

If No Answer 320-9189

WILLARD SMITH CONSTRUCTION CO

4001 Industry Dr 894-4336

Wade Service Company 3015 Martin Rd 870-8714

(Classification Continued Next Page)



Now serving
your electric power and
telecommunication needs.



More Current Than Ever

756-2706

Electric Medic Service Company

Chattanooga's Residential Specialist For Over 25 Years

New Home Wiring
Circuits Added
Spas/Pool

Licensed
Bonded
Fully Insured

Service Upgrades
Ceiling Fans
Boat Dock Wiring

756-6733
Chattanooga

Free Estimates

822-1637
Hixson, Soddy Daisy

870-2212
East Brainerd
Ooltewah, Harrison

266-1706
Dayton, Spring City
Rhea County



DIRECTIONS

in the Community
Interest Section.

The Real
Yellow Pages®



LOCAL LEGACY

trust

What is in this for you?

Faster, easier access to the world, competitive voice and data from a proven and trusted local source.

Positive side-effect?
That would be
**sustaining
Chattanooga.**



May 6, 1882 was the first day in the history of electric power in Chattanooga. At 8 p.m., 25 city streetlights were lit in what was called a "blaze of glory." We were the south's first city with electric street lighting.

Now Chattanooga has taken another great leap forward in technology. **EPB Telecommunications** has developed an extraordinarily powerful telecommunications network to serve the businesses of this area. This source for advanced voice and data services has all of the solid reliability, local accountability and community leadership as **EPB**, its parent division. Our next-generation fiber-optic network is the system backbone, engineered for both robust growth and unsurpassed recoverability.

EPB Telecommunications' reliable network solutions will benefit Chattanooga businesses and the community as a whole. Choosing **EPB Telecommunications** is choosing a much, much brighter future for our own city.

PICTURESQUE HILL
M CHATTANOOGA
POINT OF LOOKOUT
OVE THE CLOUDS
ROUGH WAUHATCH

CHATTANOOGA
CITY LIMITS

CHATTANOOGA
WEST SIDE OF THE
HILL

CHATTANOOGA



Telecommunications

Telecommunications Division last year, we made a long-term commitment to better serve local businesses, and we have dedicated all of our available resources to building a sound telecommunications business that is strong enough and stable enough to grow with the needs of its customers.”

And according to Blair Carter, president of Carter Distributing, EPB’s demonstrated commitment to promoting local business played a significant role in his decision to switch to EPB Telecommunications. “EPB already had a superb reputation in Chattanooga,” he explains. “Few companies offer the same dedication to both community and customer service that EPB does, and that philosophy has carried over into their Telecommunications Division. When I’d call my previous provider, I’d usually get an answering service and rarely a return call. The EPB Telecommunications team came out immediately to assess our needs, designed our system and converted our service right on schedule, and their follow-up has been impeccable. The whole transition was seamless, and we are already witnessing a significant reduction in our telecommunications expenses.”

In addition to the acquisition of new customers, EPB Telecommunications’ growth is also due in large part to the continued expansion of existing clients. Over the past year, many existing customers have added an average of 1-2 lines, acquired Internet service through the company’s strategic alliance with Chattanooga Data Connection, or made even more significant service additions to their telecommunications networks. The secret, says Chapman, is maintaining a successful balance of product and service: “We keep a keen eye on what existing customers need for the growth of their own businesses. We try to anticipate those needs, then work to provide resources that exceed them. After all, as our customers grow their businesses, we grow ours.”

△ Top

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**

3
4 **November 21, 2003**
5
6

IN RE: COMPLAINT OF US LEC OF) *DOCKET NO: 02-00562*
TENNESSEE, INC. AGAINST ELECTRIC)
POWER BOARD OF CHATTANOOGA)
)

7
8 **DIRECT TESTIMONY OF WANDA G. MONTANO ON BEHALF OF US LEC OF**
9 **TENNESSEE INC.**

10 **Q: PLEASE STATE YOUR NAME, TITLE, AND ADDRESS FOR THE RECORD.**

11 **A:** My name is Wanda G. Montano. I am currently Vice President, Regulatory and Industry
12 Affairs for US LEC Corp., the parent company of US LEC of Tennessee Inc. ("US
13 LEC"), and its operating subsidiaries, including the Petitioner in this proceeding. My
14 business address is 6801 Morrison Blvd., Charlotte, NC 28211.

15 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR US LEC.**

16 **A:** I am responsible for the management of US LEC's relationships with state and federal
17 agencies who oversee our business, as well as for US LEC's relationships with
18 Incumbent Local Exchange Carriers ("ILECs"), Competitive Local Exchange Carriers
19 ("CLECs"), Independent Telephone Companies ("ICOs") and wireless companies.

20 **Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
21 **PROFESSIONAL EXPERIENCE.**

22 **A:** I joined US LEC in January 2000. Prior to that, I was employed in various positions by
23 Teleport Communications Group ("TCG") and then by AT&T following AT&T's
24 acquisition of TCG. In 1998-1999, I served as General Manager for North and South
25 Carolina (Sales Executive) for AT&T (Charlotte, N.C.) During 1997-1998 I was Vice
26 President & Managing Executive for North & South Carolina (Sales and Operations

1 Executive) for TCG (Charlotte, N.C.) During 1995-1997, I served as Vice President,
2 CLEC Services for TCG (Staten Island, N.Y.) During 1994-1995, I was Director of
3 Process Reengineering for TCG (Staten Island, N.Y.) During 1992-1994, I was Director
4 of Marketing for TCG (Staten Island, NY). During 1990-1992 I was Senior Product
5 Manager for Graplinet (Teaneck, N.J.). From 1982-1990, I was Regulatory Manager for
6 Sprint Communications Corp. in Reston, Virginia and, from 1979-1982 I was a paralegal
7 for GTE Service Corporation in Washington, D.C. I have a B.S. from East Carolina
8 University in Greenville, N.C. (1974). I received my Paralegal Certificate from the
9 University of Maryland in 1980 and I received my M.B.A. in Marketing & Government
10 Affairs from Marymount University of Virginia in 1988.

11 **Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE TENNESSEE**
12 **REGULATORY AUTHORITY**

13 A: No, I have not. However, I have testified before the North Carolina Utilities
14 Commission, the New York Public Service Commission, the Florida Public Service
15 Commission, the Maryland Public Service Commission, the Pennsylvania Public Utilities
16 Commission, and the Georgia Public Service Commission.

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. The purpose of my testimony is to explain what I understand to be the legal and the
19 competitive policy arguments in support of US LEC's position that EPB, formerly the
20 Electric Power Board of Chattanooga, is cross subsidizing its telecommunications
21 division, EPB Telecom, in violation of both state law and the orders of the TRA.

1 **Q. DO YOU HAVE ANY EXAMPLES OF THAT SUBSIDIZATION?**

2 A. As discussed extensively in the testimony of Mr. Michael G. Moeller, there are numerous
3 examples of EPB's illegal subsidization and joint marketing activities. For example, one
4 EPB advertisement (Moeller Exhibit 2) states,

5 "Hear the one about the power company that got into the phone
6 biz? . . . Imagine your phone and power sources coming from one
7 source. We're thinking about EPB, the power company you can
8 expect more from."

9 Mr. Moeller's testimony contains numerous other examples of how EPB is marketing its
10 telephone service by using the good will, reputation and financial soundness of EPB's
11 electric business. This subsidization is neither occasional nor accidental. It is a
12 concerted effort to persuade the public that, because EPB Telecom is a division of EPB,
13 the telephone division has been established longer and provides more reliable service
14 than other competing local exchange carriers. Neither is true, of course. But even more
15 importantly, this campaign clearly violates the orders of the TRA and state law.

16 **Q. HOW DOES THIS VIOLATE THE ORDERS OF THE TRA AND STATE LAW?**

17 A: The "Code of Conduct" adopted by the TRA when EPB was granted approval to offer
18 telephone service permits the "joint marketing" of EPB's electric and telephone services
19 "provided that the customer is informed of the separate identities of each [division]." As
20 shown above and in the many examples described by Mr. Moeller, it is clear that EPB has
21 repeatedly violated this requirement. The joint marketing is intended to emphasize that
22 the two divisions are part of the same entity, not to inform the public that the divisions
23 are separate operations. It is also clear that the "Code of Conduct" needs to be
24 strengthened and clarified to prevent EPB from leveraging the good will and reputation
25 of EPB electric to subsidize the telecommunications division. T.C.A. § 7-52-402 states

1 that a municipal electric system providing telecommunications services “shall not provide
2 subsidies for such services.” (There are some limited exceptions not applicable here.)
3 Through the joint use of the EPB name, the joint marketing efforts which depict EPB’s
4 telecommunications and electric divisions as being offered by the same entity, and the
5 campaign to sell telephone service by leveraging the good will, reputation, and financial
6 stability of EPB’s electric operations, EPB operates in complete disregard of that statute.

7 **Q. HOW DOES THIS CONSTITUTE A SUBSIDY?**

8 A: EPB obviously has a highly recognized name in the Chattanooga area as the city’s
9 monopoly electric provider. The use of that name, along with the reputation and good
10 will developed over seventy years of being in the electric business, has significant market
11 value. EPB is using that market value to subsidize EPB Telecom.

12 **Q. PLEASE ELABORATE.**

13 A. Over those years, the Electric Power Board, now EPB, has invested millions of dollars in
14 marketing that name and building a reputation for reliability and customer service. That
15 multi-million dollar asset, the name and reputation of EPB, was paid for by the electric
16 ratepayers of Chattanooga. Now it is being used to promote and sell EPB’s telephone
17 services. Using a ratepayer funded asset of the power company to market telephone
18 service is clearly providing a subsidy to EPB Telecom which state law prohibits. It is no
19 different than if EPB electric was using ratepayer funds to build the EPB Telecom
20 network.

21 **Q. IS US LEC’S POSITION THAT EPB TELECOM SHOULD BE REQUIRED TO**
22 **CHANGE ITS NAME?**

23 A. No. The Hearing Officer previously assigned to this case has already ruled that the “mere
24 use of the EPB name strictly for identification purposes is not illegal.” “Order Denying

Petition for Partial Reconsideration,” July 24, 2003 at p. 3. US LEC did not contest that ruling. But the Hearing Officer also noted that her decision “differentiated between the use of EPB’s name of identification purposes and marketing purposes.” Id. She added, “Any issues regarding the ‘leveraging’ of the name EPB in the context of joint marketing involving the electric and telecommunications divisions remain to be tried.” Id.

Q. WHAT RELIEF DOES US LEC SEEK?

A. We ask that the TRA direct that EPB end the subsidization of its telecommunications division. The telecommunications division is still part, and will remain part, of EPB. It can use the EPB name “strictly for identification purposes.” In other words, within EPB, it would still be called the EPB telecommunications division. But for purposes of doing business as a competitive local exchange carrier, the division must adopt a new “d/b/a” name that does not indicate any relationship with EPB. Just as the name “Memphis Networx” does not indicate that the Memphis-based CLEC is connected to the city owned utility company, Memphis Light, Gas & Water, EPB’s telecommunications division should operate under a name that does not incorporate any reference to EPB. The telecommunications division should also be prohibited from doing any joint marketing with the electric division or otherwise indicating in its advertising and marketing that the telecommunications division is part of EPB. That is the only way to prevent EPB from subsidizing its telephone operations.

Q. ARE YOU ASKING THAT THE TELECOMMUNICATIONS DIVISION HIDE THE FACT THAT IT IS PART OF EPB?

A. Of course not. I simply want to stop EPB from using its name, reputation, and good will to subsidize its telephone business. It’s clear that the Code of Conduct hasn’t worked. It’s purpose and the purpose of the state law which prohibits municipal electric systems

1 from subsidizing their telephone operations is to create a level playing field for all
2 competing local exchange carriers. As long as EPB's telecommunications division does
3 business as "EPB Telecom," there is no level playing field. It is clear from EPB's
4 advertising and marketing practices that the whole purpose of using the "EPB Telecom"
5 name is to sell telephone service based on the good will and reputation of EPB's electric
6 service. The only effective remedy is for this agency to require EPB's
7 telecommunications division to market itself under a new name.

8 **Q. DOES THAT COMPLETE YOUR TESTIMONY?**

9 **A. Yes.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 21st day of November, 2003.

Mark Smith, Esq.
Strang, Gletcher, Carriger, Walker, Hodge & Smith, PLLC
400 Krystal Building
One Union Square
Chattanooga, TN 37402-2514

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300


Henry Walker